IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/08/2007

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THE HONOURABLE MR.JUSTICE R.SUDHAKAR

CMA. No.231 of 2001

United India Insurance Company Ltd.
Ranipettai. ... Appellant/2nd respondent

Vs.

1. Sundaram

2. S.Sivakumar

3. Natesa Udayar

4. Abaranam ... Respondents/petitioner
and respondents 1, 3 & 4

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 26.9.2000 and made in M.C.O.P.No.310 of 1999 on the file of the Motor Accidents Claims Tribunal (Principal District Court), Perambalur.

For appellant : Mr.Ramesh for R.Vedantham

For respondents : Mr.Karthik Raja for R1

: Mr.R.Selvakumar for R3 and R4

: No appearance for R2

JUDGMENT

The appeal is filed by the insurance company challenging the award dated 26.9.2000 and made in M.C.O.P.No.310 of 1999 on the file of the Motor Accidents Claims Tribunal (Principal District Court), Perambalur.

2. On the quantum of compensation, a plea is raised in the appeal memorandum, however, the learned counsel for the appellant now fairly states that such contention is not seriously disputed.

3. The accident in this case occurred on 28.8.1999 at about 7.30 p.m. on National Highways NH 45. The deceased in this case one Ganesan aged about 25 years was travelling on a two wheeler (TVS 50) and proceeding towards Trichy side. When he was nearing a place called Chinnaru Bridge, due to the dazzling light of an oncoming bus, he hit the rear side of a lorry, which was parked on the left side of the National Highway and in that accident, he suffered serious head injury. He was admitted in Perambalur Government Hospital and then on the way to Trichy Government Hospital he died. The accident was witnessed by P.W.2 Rajendran who stated that he was travelling in another two wheeler(TVS 50) behind the deceased on the fateful day. P.W.2 Rajendran, the eye witness gave the complaint to the police on the next day i.e., 29.8.1999 at 8.00 a.m. According to the complaint lodged by the said Rajendran, the deceased Ganesan and Rajendran were travelling on two separate vehicles. When they were proceeding towards Chinnaru at about 7.00 p.m. and when they were nearing Chinnaru Bridge, a bus which was coming from Trichy was approaching them with dazzling light and thereby the deceased Ganesan and Rajendran could not see the lorry bearing Registration No.TDY 7277, parked on the National Highway on the left hand side. In the complaint, it is stated that the parked lorry did not have a danger light. It is specifically stated in the complaint that because of the dazzling light, Ganesan who was proceeding in the front in his two wheeler dashed against the parked lorry and suffered injury. He was taken to Perambalur Government Hospital and thereafter on the way to the Trichy Government Hospital he died.

4. In a claim for compensation the wife of the deceased was examined as P.W.1. The eye witness Rajendran, was examined as P.W.2 on 12.9.2000. In his chief examination, P.W.2 reiterated the facts stated in his complaint given on 29.8.1999. In the cross examination, P.W.2 reiterated his stand that the parked lorry did not have the danger light. On behalf of the present appellant, the respondent before the Tribunal no evidence was produced and no witness was examined.

5. The contention raised in the claim petition, the facts and details given in the complaint (Ex.P-1) and the evidence of P.W.2 corroborate each other and is not controverted by any other oral or documentary evidence by the appellant. Relying on Ex.P-1 FIR and the evidence of P.W.2 and also taking into consideration that there is no evidence rebutting the factual details set out by the claimant, the Tribunal came to hold that the accident occurred on account of negligence on the part of the driver of the lorry, who had parked the lorry on the National Highway without a danger light. It is against this finding, the present appeal has been filed.

6. Learned counsel for the appellant relied on the decision of a Division Bench of this Court in Vimala and another vs. - Devadoss and 3 others reported in 1991-2 Law Weekly 149 and stated that merely because the rear danger red light of the lorry was not kept burning as per rules, negligence cannot be attributed on the driver of the lorry and liability cannot be fastened on the appellant. He relied on para 5 of the said decision:-

"5. Regarding these rival submissions, no doubt we find that R.W.1 deposed that in the abovesaid parked lorry, there was no red light burning at its rear side. But it has been held in K.Gopalakrishnan vs. - Sankaranarayanan Nair (1968 Madras 416 (DB) that the failure to observe the driving regulations does not in itself necessarily constitute negligence and the effect given to the said failure must necessarily depend on the facts of each case. In the present case, we find that R.W.1 also deposed in cross-examination that through the front lights of his bus he could see 30 distance on the road. So he could have easily seen the parked lorry at a distance of 30' and if he had been careful he could have applied the brake and stopped his vehicle without hitting the lorry, particularly when it is admitted by him that the lorry was only on the left side of the road-that too,

below the main part of the road and that the road in question was abroad straight road. R.W.1, no doubt, sought to defend himself by saying

VERNACULAR (TAMIL) PORTION DELETED

But first of all there seems to be no plea to this effect. That apart, as soon as he found that in view of the glare of the bright lights of the vehicles from the opposite side he could not see the road before him, he should have very much slowed down his vehicle or even stopped it. Further, any way, the negligence on the part of those vehicles in creating the said glare and the want of care on the part of R.W.1 in such a situation cannot be disregarded. So the non-burning of the rear red light of the lorry, by itself, cannot be taken as negligence on the part of the lorry driver, in the fact of the abovesaid evidence of R.W.1."
(emphasis supplied)

7. On the contrary, the learned counsel for the respondents/ claimants relied upon the following decisions:

(i) New India Assurance Co. Ltd., - vs. - Maya Wati and others 1992 ACJ 620,

(ii) Nirmal Bhutani vs. - Haryanan State AIR 1983 Punjab and Haryana 188, and

(iii) a decision of this Court in C.M.A.No.1056 of 2001 dated 1.11.2006
and contended that the accident had happened because of the negligence on the part of the driver of the lorry who failed to observe the Rules, viz., Motor Vehicle Rules, 1988 and had parked the lorry in a careless manner on a highway. He stated that the time of accident (i.e.)7.00 p.m. Learned counsel for respondents/claimants relied upon Rules 107 and 109 which are relevant for the purpose of this case:

"Rule 107. Top lights. - Every goods vehicle including trailer and semi-trailer other than three-wheelers and vehicles with overall width not exceeding 2.1 metres shall be fitted with two white lights at the top right and left corners showing light to the front and two red lights at the top right and left corners at the rear. The lights shall remain lit when the vehicle is kept stationary on the road during night and at the time of poor visibility:

Provided that in the case of goods carriage without a full body in the rear, provision, for fitting of the top light at the rear shall not be necessary".

"Rule 109. Parking light. Every motor vehicle other than three wheelers of engine capacity not exceeding 500 cc, motor cycles and three wheeled invalid carriage shall be provided with one white or amber parking light on each side in the front. In addition to the front lights, two red parking lights one on each side in the rear shall be provided. The front and rear parking lights shall remain lit even when the vehicle is kept stationary on the road:

Provided that these rear lamps can be the sums as the rear lamps referred to in rule 105, sub-rule (2):

Provided further that in the case of agricultural tractors, parking lights shall be mounted on the rear mudguards so that the lights are visible from the front and also from the rear."

8. In the present case, the evidence of P.W.2 clearly states that the two wheeler was proceeding on a National Highway and there was an oncoming bus with dazzling light. Even in the F.I.R. and in his evidence in chief and cross-examination, P.W.2 has clearly stated that because of the lorry was stationed on the national highway without danger light, the accident had happened. Such evidence has not been controverted. In the facts of the case relied upon by the counsel for the appellant there are two factors which differ from the facts of present case.

9. In the decision reported in 1992-2 Law Weekly 149 (cited supra), it is recorded that R.W.1, the driver of the bus had deposed in cross-examination that through the front lights of the bus, he could see 30 feet distance on the road. The second factor is that the plea of dazzling light was rejected on the ground that there was no such plea to that effect. The accident in the reported decision is between a lorry and a bus, whereas in the present case, it is a two wheeler which had hit on the rear side of the parked lorry. In the reported decision, it was also noticed that the lorry was parked not only on the left side of the road, but, below the main part of the road. In the present case, there is no material or evidence on behalf of the appellant to show that the lorry was parked away from the main road without any hindrance to the free flow of traffic. The two wheeler in question was proceeding on the left side of the road. In the absence of the danger light and due to the dazzling light from oncoming vehicle, it is apparent that the driver of the two wheeler did not notice the parked lorry and therefore, he did not have the time to respond and reduce the speed so as to avoid the accident. The accident does not appear to be due to fault on the part of the deceased for more than one reason.

(a) The non-burning of red light of the parked lorry,

(b) The dazzling light of the oncoming vehicle,

(c) The time of accident is 7.00 p.m.

(d) Lack of sufficient space on the left hand side of the National Highway
In this case, if the driver of the lorry had been little more careful and kept the danger light burning, that would have cautioned the deceased and the accident could have been averted. The non-observance of the Motor Vehicles Rules as extracted above and its consequence has to be tested in the light of an important factor in a case of this nature, viz., "negligence".

10. The term "negligence" has been discussed by the Apex Court in Municipal Corporation of Greater Bombay vs. - Laxman Iyer & another 2004(1) TN MAC(SC) 16 = 2004 1 MLJ 82. Para 6 of the judgment which is relevant reads as follows:

"A plea which was stressed strenuously related to alleged contributory negligence. There is no statutory definition, in common parlance 'negligence' is categorized as either composite or contributory. It is first necessary to find out what is a negligent act. Negligence is omission of duty caused either by an omission to do something which a reasonable man guided upon those considerations who ordinarily by reason of conduct of human affairs would do or obligated to, or by doing something which a prudent or reasonable man would not do. Negligence does not always mean absolute carelessness, but want of such a degree of care as is required in particular circumstances. Negligence is failure to observe, for the protection of the interests of another person, the degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. The idea of negligence and duty are strictly correlative. Negligence means either subjectively a careless state of mind, or objectively careless conduct. Negligence is not an absolute term, but is a relative one; it is rather a comparative term. No absolute standard can be fixed and no mathematically exact formula can be said just and down by which negligence or lack of

it can be infallibly measured in a given case. What constitutes negligence varies under different conditions and in determining whether negligence exists in a particular case, or whether a mere act or course of conduct amounts to negligence, all the attending and surrounding facts and circumstances have to be taken into account. It is absence of care according to circumstances. To determine whether an act would be or would not be negligent, it is relevant to determine if any reasonable man would foresee that the act would cause damage or not. The omission to do what the law obligates or even the failure to do anything in a manner, mode or method envisaged by law would equally and per se constitute negligence on the part of such person. If the answer is in the affirmative, it is negligent act. Where an accident is due to negligence of both parties, substantially there would be contributory negligence and both would be blamed. In a case of contributory negligence, the crucial question on which liability depends would be whether either party could, by exercise of reasonable care, have avoided the consequence of other's negligence. Whichever party could have avoided the consequence of other's negligence would be liable for the accident. If a person's negligence act or omission was the proximate and immediate cause of death, the fact that the person suffering injury was himself negligent and also contributed to the accident or other circumstances by which the injury was caused would not afford a defence to the other. Contributory negligence is applicable solely to the conduct of a plaintiff. It means that there has been an act or omission on the part of the plaintiff which has materially contributed to the damage, the act or omission being of such a nature that it may properly be described as negligence, although negligence is not given its usual meaning. (See Charlesworth on Negligence, 3rd Edn. Para 328). It is now well-settled that in the case of contributory negligence, Courts have power to apportion the loss between the parties as seems equitable. Apportionment in that context means that damage are reduced to such an extent as the Court thinks just and equitable having regard to the claim shared in the responsibility for the damage. But in a case where there has been no contributory negligence on the part of the victim the question of apportionment does not arise. Where a person is injured without any negligence on his part but as a result of combined effect of the negligence of two other persons, it is not a case of contributory negligence in that sense. It is a case of what has been styled by Pollock as injury by composite negligence."

(emphasis supplied)

From the above said decision, it is clear that even omission on the part of a person who is obligated by law or has failed to do anything in a manner, mode, or method envisaged by law per se constitute negligence on the part of such person. In this case, the driver of the parked lorry did not observe the rules and failed to keep the danger light burning. Yet another factor which would support the case of the claimant is that the two wheeler in question was proceeding on the left side of the road and there is a specific plea supported by the statement in the complaint which clearly states that an oncoming vehicle was approaching with a dazzling light. There is nothing to show that the deceased was rash or negligent while driving and that the accident had happened due to any fault on the part of the deceased. Even if the oncoming vehicle was approaching with dazzling light, if the lorry was parked without obstructing the free flow of traffic in the National Highway, the accident would not have happened.

11. The evidence on record, viz., that of P.W.2, the eye witness and the statement in F.I.R., clearly go to show that the deceased was travelling on the left side of the road. It is not even suggested that the deceased in this case has gone astray and hit the rear side of the parked lorry. It, therefore, leads to the one and only conclusion that the lorry was parked without rear danger light on the national highway and it was obstructing the free flow of traffic and this was the cause of accident in which the deceased died.

12. The appellant on the contrary did not rebut the stand of the claimants, particularly, the evidence

of P.W.2 in the manner known to law. Therefore, the decision of the Division Bench relied on by the learned counsel for the appellant on facts will not apply to the facts of the present case.

13. The nature of accident recorded in the F.I.R. corroborated by the evidence of P.W.2 stands unrebutted. The only conclusion that can be arrived in the present case is that the accident had happened only because of the negligence on the part of the driver of the lorry who had parked the vehicle on the national highway without observing the Rules as stated aforesaid. I, therefore, find no reason to interfere with the finding of the Tribunal with regard to negligence.

14. Since the quantum of compensation awarded by the Tribunal is not seriously disputed in the appeal, the same is confirmed.

15. The motor accident cases are unsavory litigation. The loss of life and the pain and suffering are unwelcome visitors. The realization is after the event and in many cases the victims walk away with a sulk cursing their fate. The malady unfortunately is not addressed in the way it should be. It is regularly reported and it is also a matter of record that the road accidents are increasing year after year. The statistics reveal that accidents in most cases are caused due to non-observance of the Motor Vehicle Rules and sometimes carelessness on the part of the victims. Rash and negligent driving without observing the Motor Vehicle Rules, haphazard parking of vehicles on streets, roads, highways is rampant and are major contributors to road accidents.

16. Road discipline is the first causality in our country. Though it is reported in media that the steps are taken to educate the public about the need to maintain road discipline and follow the Motor Vehicle Rules, there is hardly any response and results are not impressive. The statistics relating to fatal and injury cases consequent to the accident belie the claim of the authorities.

17. This Court is constrained to state in pain that while dealing with large number of motor vehicle cases, it is found that people are encouraged to use goods vehicle like lorry, pickup van, tractor for carrying people from place to place. In some cases passengers are allowed to travel on the roof top of bus and in most cases there is over crowding of the bus which literally runs on three wheels bearing the full weight on one side. Three persons travelling in a motor cycle, passengers travelling like packed-sardines in auto rickshaws is a common feature on the road. Invariably the claims are negatived for violation of the rules. While addressing public on this issue, the law enforcement agency and the motor vehicles authorities have a greater role to play to ensure that such violations are not ignored as a routine affair. The people particularly from rural side have to be made aware of the rules and the breach committed by them purely out of ignorance and thereby losing the compensation as well.

18. Strict enforcement of Motor Vehicle Rules and road discipline is the need of the hour. The increase of vehicles and consequent rise in the number of road accident, is no good answer to the mounting road accidents. If more effort is taken on the part of the authorities to enforce the Motor Vehicle Rules and Road Traffic discipline, it will save enormous cost. It will save the loss of the individuals life and money. It will also save the loss of man power, the huge amount spent by the State to take care of the victims of road accident, the time and energy spent by the police and other authorities of the State. The Police and Motor Vehicles Department should be better tuned to the need of the hour and ensure that the number of accidents are brought down by strictly enforcing the Motor Vehicles Rules and Road Traffic Discipline. The laxity on the part of the authorities, cost the exchequer a great deal of public money. It is nothing, but dereliction of duty if they do not enforce the law. The law enforcement authorities shall henceforth take a serious view of the situation and enforce the provisions of Motor Vehicle Rules and ensure strict discipline in road use.

19. In the result, the Civil Miscellaneous Appeal is dismissed. No order as to costs. Consequently, connected miscellaneous petition is closed.

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To

1. The Motor Accidents Claims Tribunal
(Principal District Judge)
Perambalur.

2. The Record Keeper
V.R. Section
High Court
Madras.